

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: AMAZON SERVICE FEE  
LITIGATION

CASE NO. 2:22-cv-00743-TL

(CONSOLIDATED CASE)

ORDER ON MOTION TO  
CONSOLIDATE

This matter is before the Court on Defendant Amazon.com Inc.'s Motion to Consolidate. Dkt. No. 81. Having reviewed Plaintiff Dena Griffith's response (Dkt. No. 85) and Defendant's reply (Dkt. No. 89), as well as the opposition of interested party Wilbert Napoleon (Dkt. No. 83), the Court DENIES the motion.

**I. BACKGROUND**

The Court assumes familiarity with the facts of the case. Relevant to the instant motion, this matter is a proposed class action related to the cost of Defendant's Whole Foods grocery delivery services. *See* Dkt. Nos. 47 (Consolidated Class Action Complaint), 73 (First Amended

1 Consolidated Class Action Complaint). Plaintiff argued that Defendant’s decision to end free  
2 delivery services and instead charge a fee for the same benefit is a violation of California and  
3 Washington consumer protection laws (Dkt. No. 47 ¶¶ 47–89) as well as Washington tort and  
4 contract law (*id.* ¶¶ 90–130). Upon an initial motion to dismiss by Defendant, all of Plaintiff’s  
5 claims were dismissed with leave to amend certain claims. *See* Dkt. No. 72 (order). In her  
6 amended complaint, Plaintiff now asserts only a violation of the Washington Consumer  
7 Protection Act (“WCPA”) (Dkt. No. 73 ¶¶ 58–66) and a breach of the duty of good faith and fair  
8 dealing (*id.* ¶¶ 67–72). Defendant filed a second motion to dismiss, which remains pending. *See*  
9 Dkt. No. 76.

10 On February 9, 2024, another action related to Prime benefits was filed in this District. In  
11 *Napoleon v. Amazon.com, Inc.*, named plaintiff Wilbur Napoleon brings a proposed class action  
12 related to Defendant’s decision to end ad-free streaming of movies and television shows as a  
13 benefit of Prime membership. No. C24-186, Dkt. No. 1 (W.D. Wash. Feb. 9, 2024). Napoleon  
14 argues that Defendant’s decision to end ad-free streaming and charge a fee for the same benefit is  
15 a violation of Washington contract law (*id.* ¶¶ 36–56) as well as of California and Washington  
16 consumer protection laws (*id.* ¶¶ 57–114).

17 Defendant now moves to consolidate this matter with the *Napoleon* matter. Dkt. No. 81;  
18 *see also* Dkt. No. 89 (reply). Plaintiff opposes (Dkt. No. 85), as does Napoleon (Dkt. No. 83).

19 Defendant also gives notice of two other actions in this District (filed after the Motion to  
20 Consolidate) that are also related to Defendant’s decision to end ad-free streaming.<sup>1</sup> Dkt.

21 Nos. 84, 88; *see Gianne et al. v. Amazon.com Inc.*, No. C24-309, Dkt. No. 1 (W.D. Wash. Mar.

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23 <sup>1</sup> In its notices, Defendant does not explicitly request that these matters also be considered and consolidated under  
24 the instant motion. However, to the extent that Defendant may later seek to consolidate these matters, the Court’s  
reasoning is still applicable, as the *Napoleon*, *Gianne*, and *Peterson* matters all concern Defendant’s elimination of  
ad-free video streaming.

1 7, 2024); *Peterson et al. v. Amazon.com Inc.*, No. C24-364, Dkt. No. 1 (W.D. Wash. Mar. 19,  
2 2024).

## 3 II. LEGAL STANDARD

4 Federal Rule of Civil Procedure 42(a) provides that, “[i]f actions before the court involve  
5 a common question of law or fact, the court may . . . consolidate the actions . . .” Courts have  
6 broad discretion to consolidate cases pending in the same district. *Garity v. APWU Nat’l Labor*  
7 *Org.*, 828 F.3d 848, 855–56 (9th Cir. 2016). In deciding whether to exercise this discretion,  
8 courts generally look to such factors as “judicial economy, whether consolidation would expedite  
9 resolution of the case, whether separate cases may yield inconsistent results, and the  
10 potential prejudice to [any opposing party].” *Amazon.com, Inc. v. AutoSpeedstore*, No. C22-  
11 1183, 2022 WL 11212033, at \*1 (W.D. Wash. Oct. 19, 2022) (citing 9 Charles Alan Wright &  
12 Arthur R. Miller, *Fed. Prac. & Proc.* § 2383 (3d ed., Apr. 2022 Update)).

## 13 III. DISCUSSION

14 Defendant argues that this matter and the *Napoleon* matter may be consolidated because  
15 they involve common questions of law and fact. *See* Dkt. No. 81 at 5–7. Defendant also argues  
16 that various factors support consolidation, including judicial economy, consistency of results,  
17 and lack of prejudice. *See id.* at 7–8. In opposition, Plaintiff argues that the two matters “do not  
18 involve common questions of law or fact” as required under Rule 42(a). Dkt. No. 85 at 4; *see id.*  
19 at 4–6. Napoleon emphasizes that the matters are “factually and legally different.” Dkt. No. 83 at  
20 3; *see id.* at 3–4. Plaintiff and Napoleon also argue that consolidation is not appropriate because  
21 it will not promote judicial economy and will prejudice Plaintiff. *See* Dkt. No. 85 at 6–7; Dkt.  
22 No. 83 at 2–6.

1 Here, the Court finds that consolidation is not appropriate. While there may be *some*  
2 common questions of law or fact (*e.g.*, the applicability of the Prime Terms & Conditions), there  
3 are significant differences, both factually and legally, that caution against consolidation.

4 For example, Prime Video has its own contractual terms and conditions that may be at  
5 issue in *Napoleon* but are not applicable to this matter. *See* Amazon Prime Video Terms of Use,  
6 <https://perma.cc/7AVM-CAVW> (last updated Oct. 19, 2023); *Napoleon*, No. C24-186, Dkt.  
7 No. 1 ¶¶ 36–43 (alleging that plaintiff entered “contracts” that promised ad-free video  
8 streaming). Indeed, *Napoleon* points out that “in response to consumer inquiries and complaints  
9 about the removal of ad-free videos, [Defendant’s] customer service department has been  
10 pointing consumers to the section in its Prime Video terms and conditions that governs ‘updates  
11 and modifications to the service.’” Dkt. No. 83 at 4 (citing Prime Video Terms § 6(d)).  
12 Defendant does not appear to dispute that the Prime Video terms may be applicable to the  
13 *Napoleon* case, instead arguing that both cases are governed by the Prime terms and need not be  
14 identical. *See* Dkt. No. 89 at 3. To be sure, the cases “need not be identical as a prerequisite to  
15 consolidation,” *Abbott v. Amazon.com Inc.*, No. C23-1372, 2023 WL 7496362, at \*1 (W.D.  
16 Wash. Nov. 13, 2023), but the possible relevance of additional contractual terms not applicable  
17 to this matter weighs against consolidation.

18 In addition, the cases will involve distinct factual discovery, even if there is ultimately  
19 some degree of overlap. This matter concerns a change to Whole Foods delivery services made  
20 in 2021 (Dkt. No. 73 ¶ 13), whereas *Napoleon* concerns a change to Prime Video services made  
21 in 2024 (No. C24-186, Dkt. No. 1 ¶ 13)—different changes, three years apart, with different  
22 representations to consumers by Defendant. The putative classes are also different: here, the  
23 classes are comprised of all Prime subscribers who used the Whole Foods delivery service in  
24 2021 forward (Dkt. No. 73 ¶ 45), whereas in *Napoleon*, the classes are comprised of annual

1 Prime subscribers as recent as December 2023 (No. C24-186, Dkt. No. 1 ¶ 29). All these  
2 differences would appear to complicate the Court’s management of a consolidated case.  
3 Defendant insists that “overlapping and duplicative discovery” (Dkt. No. 89 at 4) supports  
4 consolidation, but this is not a self-evident proposition. Other than identifying “similar periods”  
5 for these service changes (*id.*), Defendant does not at all explain what the overlapping discovery  
6 might be and thus to what degree consolidation would promote judicial economy.

7 As another court in this District recently observed, “[Defendant] is huge; it may get  
8 accused of violating similar laws many times a year, in many different ways, and not all of these  
9 actions can or should be consolidated.” *Daly v. Amazon.com, Inc.*, No. C22-910, 2024 WL  
10 841457, at \*3 (W.D. Wash. Feb. 28, 2024). Even if there are common questions of law or fact  
11 between this matter and *Napoleon*, the differences are significant enough that the Court does not  
12 find consolidation appropriate here.

#### 13 IV. CONCLUSION

14 Accordingly, Defendant’s Motion to Consolidate (Dkt. No. 81) is DENIED.

15 Dated this 28th day of March 2024.

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18 Tana Lin  
19 United States District Judge  
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